Gegah Optima Resources Sdn Bhd v The State Minerals Management Authority, Sarawak & Ors

HIGH COURT (KUCHING) — APPLICATION FOR JUDICIAL REVIEW NO KCH-13NCvC-11/11 OF 2017
AZHAHARI KAMAL J
13 FEBRUARY 2019

Administrative Law — Rules of natural justice — Procedural fairness — Appellant licensed to prospect for metals and minerals over huge area in Sarawak — Appellant's application for mining leases within licensed area rejected by Sarawak Minerals Management Authority ('Authority') without giving of any reason — Appellant spent RM6m in exploration and prospecting expenses when it applied for the leases — Whether Authority's decision to reject application without reason procedurally improper, irrational and breached natural justice — Whether although Sarawak Mineral Ordinance 2004 did not expressly provide for appellant to be given opportunity to be heard Authority was duty-bound under common law to hear appellant before it made decision — Whether Authority's failure to give reason for rejecting appellant's application gave rise to reasonable inference it had not considered relevant facts when deciding application and had acted arbitrarily

The applicant was granted a general prospecting licence ('GPL') under s 22 of the Minerals Ordinance 2004 ('the Ordinance') giving it the right to prospect for metals and minerals over a 15,346-hectare in Sungei Tutuh, Baram, Miri, Sarawak, for two years. During the currency of the licence, the applicant applied to the first respondent ('R1') to be granted mining leases in four places within the GPL area for a period of 20 years. R1 rejected the application without giving any reason. When the applicant requested R1 to reconsider its decision and this time asked for a smaller area for the mining leases, again R1 rejected the application without giving any reason ('the impugned decision'). The applicant applied for judicial review of R1's decision which, it said, was illegal, procedurally improper, in breach of natural justice and irrational. The applicant contended that it had a legitimate expectation that its application would be considered fairly and in accordance with the rules of natural justice as it had not only complied with all requirements of the GPL and paid the necessary fees but had also incurred exploration and prospecting expenses amounting to about RM6m. In response, R1 contended that it was empowered under s 44(5)(b) of the Ordinance to reject the applicant's application because if the leases were granted they might adversely affect a forest reserve, water catchment areas and also destroy forest resources and flora and fauna. These reasons were never communicated to the applicant and it was only disclosed for

A the first time in an affidavit filed on R1's behalf in the judicial review proceedings.

Held, quashing the impugned decision and ordering the respondents, or any one of them, to reconsider and re-determine the applicant's applications for the B mining leases after giving the applicant reasonable opportunity to: (a) remedy or submit all necessary documents in relation to its applications; and (b) address any comments or recommendations the third respondent had made under s 44(1) of the Ordinance with regard to the said applications:

C (1) Section 44(5) of the Ordinance empowered R1 to approve or reject the application for the mining leases. Notwithstanding the fact the Ordinance did not provide for the applicant to be given an opportunity to be heard, it was trite that common law imposed a duty on R1 to hear the applicant before it made a decision. This was especially so when D s 44(4) made it mandatory for R1 to verify whether the applicant had complied with the requirements of the Ordinance and was technically and financially qualified to develop and mine the area to which the application related. R1 had breached the rule of natural justice in making its decision. Considering all the facts of the case, it was imperative that R1 E should have provided the reasons for refusing to grant the mining leases. The decision was procedurally improper. The failure to give any reason gave rise to the reasonable inference that R1 had not considered relevant facts when deciding the application; that it had failed to exercise its discretion in accordance with the law (see paras 14, 18 & 24–25).

F (2) The third respondent had recommended that the applicant's application for the mining leases be provisionally approved subject to compliance with certain conditions. Any decision to be made in respect of the application had to be made fairly especially when the applicant had already spent about RM6m as exploration and prospecting expenses. The G applicant ought to be given the opportunity to convince R1 to invoke s 32(2) and/or (3) of the Ordinance when dealing with the application (see para 17).

[Bahasa Malaysia summary

H Pemohon telah memberikan lesen mencari gali umum ('GPL') di bawah s 22 Ordinan Mineral 2004 ('Ordinan tersebut') yang memberikannya hak untuk mencari gali logam dan mineral di atas 15,346 hektar tanah di Sungei Tutuh, Baram, Miri, Sarawak, selama dua tahun. Sepanjang lesen tersebut berkuat kuasa, pemohon telah memohon kepada responden pertama ('R1') agar I diberikan pajakan perlombongan di empat tempat dalam kawasan GPL selama tempoh 20 tahun. R1 telah menolak permohonan itu tanpa memberi apa-apa sebab. Apabila pemohon meminta R1 mempertimbangkan semula keputusannya dan kali ini meminta kawasan sama untuk pajakan perlombongan, sekali lagi R1 telah menolak permohonan itu tanpa memberi

apa-apa sebab ('keputusan yang dipersoalkan'). Pemohon telah memohon semakan kehakiman untuk keputusan R1 yang mana, dikatakannya, adalah tidak sah, tidak wajar secara prosedur, melanggar keadilan asasi dan tidak rasional. Pemohon menegaskan bahawa ia mempunyai jangkaan sah bahawa permohonannya akan dipertimbangkan secara adil dan menurut rukun keadilan asasi kerana ia bukan sahaja telah mematuhi semua keperluan GPL dan membayar fi yang perlu tetapi juga telah menanggung perbelanjaan penerokaan dan cari gali berjumlah lebih kurang RM6 juta. Sebagai maklum balas, R1 menegaskan bahawa ia diberi kuasa di bawah s 44(5)(b) Ordinan tersebut untuk menolak permohonan pemohon kerana jika pajakan tersebut diberikan ia mungkin akan menjejaskan hutan simpan, kawasan tadahan air dan juga merosakkan sumber hutan dan flora dan fauna. Sebab-sebab tersebut tidak pernah disampaikan kepada pemohon dan ia hanya dinyatakan untuk kali pertama dalam afidavit yang telah difailkan bagi pihak R1 dalam prosiding semakan kehakiman.

Diputuskan, membatalkan keputusan yang dipersoalkan dan memerintahkan responden-responden, atau mana-mana salah satu daripada mereka, untuk mempertimbangkan semula dan menentukan semula permohonan-permohonan pemohon untuk pajakan perlombongan selepas memberikan pemohon peluang untuk: (a) meremedikan atau mengemukakan semua dokumen yang perlu berkaitan permohonan-permohonannya; dan (b) mengutarakan apa-apa ulasan atau syor yang dibuat oleh responden ketiga di bawah s 44(1) Ordinan berkenaan permohonan-permohonan tersebut

(1) Seksyen 44(5) Ordinan memberi kuasa kepada R1 untuk meluluskan atau menolak permohonan bagi pajakan-pajakan perlombongan. Walau apa pun hakikatnya Ordinan tersebut tidak memperuntukkan agar pemohon diberikan peluang untuk didengar, ia adalah lapuk bahawa undang-undang am mengenakan kewajipan ke atas R1 untuk mengesahkan sama ada pemohon telah mematuhi keperluan Orsinan tersebut dan dari segi teknikal dan kewangan layak untuk membangunkan dan melombong kawasan itu yang mana permohonan itu adalah berkaitan. R1 telah melanggar rukun keadilan asasi dalam membuat keputusannya. Setelah mempertimbangkan semua fakta kes, ia adalah mustahak yang R1 sepatutnya mengemukakan sebab-sebab untuk menolak pemberian pajakan-pajakan perlombongan itu. Keputusan tersebut adalah tidak wajar dari segi prosedur. Kegagalan untuk memberikan apa-apa sebab menimbulkan inferens munasabah bahawa R1 tidak mempertimbangkan fakta relevan semasa memutuskan permohonan tersebut; bahawa ia telah gagal menggunakan budi bicaranya menurut undang-undang (lihat perenggan 14, 18 & 24–25).

(2) Responden ketiga telah mengesyorkan bahawa permohonan pemohon untuk pajakan-pajakan perlombongan secara sementara diluluskan tertakluk kepada pematuhan syarat-syarat tertentu. Apa-apa keputusan

yang dibuat berkaitan permohonan itu perlu dibaut secara adil terutamanya apabila pemohon telahpun membelanjakan lebih kurang RM6 juta untuk perbelanjaan penerokaan dan cari gali. Pemohon patut diberikan peluang untuk meyakinkan R1 menggunakan s 32(2) dan/atau (3) Ordinan semasa berurusan dengan permohonan tersebut (lihat perenggan 17).]

Cases referred to

Datuk Justine Jinggut v Pendaftar Pertubuhan [2012] 3 MLJ 212, CA (refd)
Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481, CA (refd)
Ketua Pengarah Kastam v Ho Kwan Seng [1977] 2 MLJ 152, FC (refd)
Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan tanggungan [1999] 3 MLJ 1; [1999] 3 CLJ 65, FC (refd)
Mohamad Hassan bin Zakaria v Universiti Teknologi Malaysia [2017] 6 MLJ 586; [2017] 10 CLJ 36, CA (refd)
Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor [2016] 2 MLJ 495; [2016] 5 CLJ 250, CA (refd)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Legislation referred to

Minerals Ordinance 2004 (Cap 56) ss 22, 32(2), (3), (3)(a), (4), 44, 44(1), (2), (3), (4), (5), (5)(b), (6)

Andy Tan (Albert Tang with him) (Andy and Assoc) for the applicant.
Azreen Fasya (State Attorney-General's Chambers Sarawak) for the respondents.

Azhahari Kamal J:

[1] In this judicial review, the applicant seeks for the following reliefs:

(a) an order of certiorari to quash the decision of the first respondent as contained in its letter dated 21 August 2017 rejecting the applicant's application for mining leases over part of the areas under the applicant's general prospecting licence No 01/2014 at Tutoh, Baram, Miri;

(b) an order of mandamus to compel the respondents or any of them to approve the grant of mining leases to the applicant over part of the areas under the applicant's general prospecting licence No 01/2014 at Tutoh Baram, Miri and more particularly described as Areas B, C and D as shown in the plan annexed to this application and marked as 'A';

(c) alternatively, an order of mandamus to compel the respondents or any of them to reconsider and re-determine the applicant's application for the

grant of mining leases over part of the areas under the applicant's general prospecting licence No 02/2014 at Tutuh, Baram, Miri and more particularly described as areas B, C and D as shown in the plan annexed to this Application and marked as 'A' after the applicant has been afforded a fair and reasonable opportunity to:

(i) remedy or submit any necessary documents in relation to the said applications if any of those documents is not in order or insufficient; and

(ii) make representations in relation to any of the comments and recommendations in the report of the third respondent under s 44(1) of the Mineral Ordinance 2004, if any of those comments and recommendation is adverse to the applicant;

(d) further or alternatively, damages to be assessed.

BRIEF FACTS OF THE CASE

[2] The undisputed fact of the case revealed that the applicant is a holder of a general prospecting licence No 01/2014 dated 23 May 2014 granted under s 22 of the Mineral Ordinance 2004, covering an area of approximately 15,346 hectares at Sg Tutuh, Baram, Miri. The general prospecting licence confers upon the applicant the right to prospect for metal and mineral in the said area from 23 May 2014 until 22 May 2016. On 24 November 2015 and 5 May 2016 the applicant submitted four applications to the first respondent to apply for mining leases over the areas A, B, C and D at Tutuh, Baram, Miri for a term of 20 years under s 44 of the Mineral Ordinance 2004. Vide letter dated 16 May 2017 the first respondent rejected the applicant's application without giving any reason. By three letters dated 13 June 2017, 24 July 2017 and 5 September 2017, the applicant requested for a review of the decision dated 16 May 2017 by the fourth respondent and for mining leases to be granted to the applicant over a smaller area ie Area B, C and D.

By a letter dated 21 August 2017 the first respondent again rejected the applicant's application for mining leases without giving any reason.

THE APPLICANT'S CASE

[3] It is contended by the applicant that as a holder of the general prospecting licence, the applicant had duly complied with the requirement of the licence and paid the necessary fees. It is also averred that they had incurred exploration and prospecting expenses amounting to a total sum of RM6,082,686.

[4] The applicant contended that the decision of 21 August 2017 was totally unfair and made in breach of natural justice. It is further argued that the

applicant has a legitimate expectation that the respondent or any of them will consider the applicant's application fairly and in accordance with the rule of natural justice. It was also contended that the respondent or any of them in making the said decision of 21 August 2017 had acted irrationally or had taken into account irrelevant consideration or had failed to take into account relevant consideration or had asked themselves the wrong question or had misconstrued the provision of the Mineral Ordinance 2004 (Cap 56) ('the said Ordinance').

THE RESPONDENT'S CASE

[5] For the respondent it was contended that:

(i) there is no illegality on the part of the first respondent in refusing to issue the mining lease to the applicant as it was done pursuant to the power conferred on the first respondent under s 44(5)(b) of the said Ordinance;

(ii) the first respondent did not act irrationally in refusing to issue the mining licence because, among other things:

(a) the area within which the mining licence was applied would affects the existing gazetted Batu Belah Forest Reserve (Permanent Forest Reserve) GN No 1144 of 16 December 1936;

(b) the area within which the mining licence was applied would affects Marudi Water Catchment area, Long Panai (Gravity Feed) Water Catchment area as well as Rural Water Intake Point; and

(c) the refusal is also to avoid destruction of forest resources and flora and fauna.

(iii) the first respondent did not commit any procedural impropriety in rejecting the applicant's application for the mining licence because it was done in compliance with s 44(5) and (6) of the said Ordinance.

[6] It must be noted that the reasons in para (ii)(a), (b) and (c) above were only 'communicated' to the applicant through the affidavit in opposition of this application affirmed by Dr Wan Lizozman bin Wan Omar affirmed on 17 August 2017 at para 6 (encl 40). It is also revealed in the said affidavit that the Director of Lands and Surveys had, by their official memorandum reference 14/HQ/MT/1/2016 (4D) dated 21 February 2017, made certain recommendation to the Setiausaha Tetap Kementerian Perancangan Sumber dan Alam Sekitar regarding the applicant's application.

DECISION OF THE COURT

[7] The main issue that need to be determined is whether the decision made by the respondent ought to be quashed for breach of natural justice.

[8] First and foremost, it must be noted that the decision dated 21 August 2017 was made pursuant to s 44 of the said Ordinance. For ease of reference s 44 is hereby reproduced:

> 44(1) An application for a mining lease shall be made to the Authority, and upon receipt thereof the Secretary shall transmit the same to the Director, for his comments and recommendations.
>
> (2) An application for a mining lease shall include a prefeasibility study which hall include —
>
> (a) a general description of the proposed mining scheme;
>
> (b) the expected commencement date of mineral production (to be stated as the number of months from the date of issuance of the mining lease);
>
> (c) a schedule of estimated annual raw ore production for the term of of the mining lease;
>
> (d) such information as may be prescribed; and
>
> (e) such other information as the Authority may reasonably require for the discharge of its functions in relation to the application.
>
> (3) Upon receipt of the comments and recommendations of the Director under subsection (1), the Authority shall consider the application.
>
> (4) In considering an application for a mining lease, the Authority shall verify that the applicant —
>
> (a) has complied with the requirements of this Ordinance; and
>
> (b) is technically and financially qualified to develop and mine the area to which the application relates
>
> (5) The Authority shall subject to section 50 either —
>
> (a) approve the application:
>
> (i) confirming that the application has complied with the requirement of this Ordinance; and
>
> (ii) specifying the terms and conditions subject to which the lease is to be granted; or
>
> (b) refuse to approve the application.
>
> (6) The Secretary shall notify the applicant and the Director in writing of its decision under subsection (5)
>
> (7) ...
>
> (8) ...

[9] It is obvious from s 44 that the authority, namely the first respondent, is given the power to decide on an application for a mining lease, subject to the requirement of sub-s (2), (3) and (4) thereof. In other words, the exercise of the first respondent's power must be done within the provision of the said

Ordinance. In this respect, the case of *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 the Federal Court stated at p 154 that:

> ... the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled 'judicial', 'quasi judicial' or 'administrative' or whether or not the enabling statutes make provision the hearing.

It was further stated that:

> ... in particular, the silence of the statute afford no argument for excluding the rules for the justice of the common law will supply the omission of the legislature.

[10] Further in the case of *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, the Federal Court opined that:

> Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. Rama Chandran is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of an inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the court to scrutinize the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus the distinction between review and appeal no longer holds.

[11] Connected to this is the need for the decision maker to give reason for its decision. In the case of *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481 at p 538 the Court of Appeal ruled that:

> Of course, he may not be procedurally compelled to furnish them: see Sanjiv Oberoi. But if he gives no reasons or inadequate reasons, then it is open for a court to conclude that he had no good reason for the decision he did ...

[12] Hence in *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor* [2016] 2 MLJ 495; [2016] 5 CLJ 250, Abang Iskandar JCA (as he then was) opined that:

> [45] ... One of the fundamental feature in modern administrative law jurisprudence has been the growing need for the public decision maker to give reasons for his decision. It may be inconvenient to do so. But it is an indivisible component in all decision making process. We find that every decision, both good and bad, is driven to such conclusion by a reason.

[13] Also in *Datuk Justine Jinggut v Pendaftar Pertubuhan* [2012] 3 MLJ 212 the Court of Appeal opined that:

> Thus if no reason is given by the respondent, it is open for this court to conclude that he had no good reason is as much as it is open for us to conclude that the respondent had not exercised his discretion in accordance with the law.

[14] In our present case, s 44(5) of the said Ordinance provides that the first respondent is empowered to approve or refuse to approve an application for mining lease. Notwithstanding the fact that the said Ordinance does not provide that the applicant should be given an opportunity to be heard, it is now trite that common law imposes a duty on the first respondent to hear the applicant before making the decision. This is especially so when sub-s (4) makes it mandatory for the authority to verify whether the applicant has complied with the requirement of the ordinance and is technically and financially qualified to develop and mine the area for which the applicant relate.

[15] In this regards it was submitted by learned counsel for the applicant that s 32(2) and (3) do not prohibit the approval of a mining license over alienated land or reserve land. Section 32(2) and (3) read:

> (2) Where the land in respect of which a prospecting licence has been granted consists, wholly or partly, of alienated land, the right of the holder of the licence to be granted mining lease or certificate over such land shall be subject to the condition —
>
> (a) that the holder of the licence is the registered owner of the land; or
>
> (b) that the holder of the licence will acquire the land and the cost of of such acquisition has been paid; and
>
> (c) that the Authority has recommended that the application be approved.
>
> (3) Where the land in respect of which a prospecting licence has been granted consists, wholly or partly, of reserved land or reserved forest area, the right of the holder of the licence to be granted mining lease or certificate over such land shall be subject to the condition —
>
> (a) that the reservation has been revoked; and
>
> (b) that the Authority has recommended that the application for mining lease or certificate be approved.

[16] With regards to the applicant's application for the mining lease, the Director of Lands and Surveys Department had made certain recommendations to the Setiausaha Tetap, Kementerian Perancangan Sumber dan Alam Sekitar vide his official memomorandum (see exh WL5, annexed to the affidavit in opposition of Dr Wan Lizozman bin Wan Omar). It is interesting to note that at para 4 of the memorandum, the Director of Lands and Survey had made a specific recommendation which reads:

> 4. It is recommended that a 'Provisional Approval' be given to the application of a mining lease subject to the company be required to prepare and submit a Pre-Feasibility Report to the Authority for consideration and approval to determine the term of the mining lease.

[17] It must also be noted that the Director of Lands and Surveys had also recommended that 'the areas of land affected under the *gazetted* Batu Belah Forest Reserve (Permanent Forest Estate) GN No 1144 of 16 December 1936 needs to be excised from the *gazettal* (as required under s 32(3)(a) of the Minerals Ordinance 2004). In other words, the relevant agency which is responsible to provide information to the authority for the purpose of considering an application for a mining lease under s 32(4) of the said Ordinance, is aware of the fact that fact that part of the area they are applying for is within the forest reserve. Notwithstanding this fact, the Director of Lands and Surveys had recommended for a provisional approval to the applicant, subject to the compliance of the conditions contained in the memorandum. In the circumstances, the applicant's right to be granted a mining licence is not affected. But the decision to be made by the first respondent may affect his rights under s 32. Hence any decision to be made in respect of their application must be made fairly, especially when the applicant had already spent RM6,082,686 as exploration and prospecting expenses. The applicant ought to be given the opportunity to convince the first respondent that s 32(2) and/or (3) should be invoked by the first respondent.

[18] Unfortunately there is no such opportunity be afforded to the applicant. The refusal of the application came in the form of a letter without being heard. The said letter also did not state any reason why such application was refused. Even if the reason for the rejection was stated in the affidavit in opposition of Dr Wan Lizozwan bin Wan Omar dated *17 August 2018*, those reasons were never stated in the letter dated *21 August 2017* giving rise to an inference that the first respondent did not consider any relevant fact when deciding on the application. Even if it can be argued that the first respondent has a valid ground in rejecting the application, the fact remain that those reason were not conveyed to the applicant before the letter was issued. As such, the decision was flawed with procedural impropriety.

[19] Section 44(5)(b) does not provide that the authority must give reasons for his refusal for any application for mining lease. The relevant question to be asked at this stage is whether, given the fact that the applicant was at the material time a holder of a general prospecting licence, the first respondent is obliged to give any reason for their refusal to grant the mining lease?

[20] In the case of *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan tanggungan* [1999] 3 MLJ 1; [1999] 3 CLJ 65, the Federal Court states:

> But it is well established that there are exceptions where the giving of reasons will be required as a matter of fairness and openness. These may occur through a particular circumstances of a particular case. Or, as was recognised in *R v Higher Education Funding Council; ex p Institute of Dental Surgery* [1994] 1 WLR 242 at p 263, there

may be classes of cases where the duty to give reasons may exist in all cases of the class. Those cases may be defined by factors relating to the particular character or quality of the decision, as where they appear aberrant, or to factors relating to the particular character or particular jurisdiction of the decision-making body, as where it is concerned with matters of special importance, such as personal liberty. There is certainly a strong argument for the view that what were once seen as exception to a rule may now be becoming examples of the norm, and the cases where reasons are not required may be taking on the appearance of exceptions. But the general rule has not been departed from and their Lordships do not consider that the present case provides an appropriate opportunity to explore the possibility of such a departure. They are conscious of the possible re-appraisal of the whole position which the passing of the Human Right Act 1998 may bring about. The provisions of art 6(1) of the Convention of Human Rights, which are now about to become directly accessible in national courts, will require closer attention to be paid to the duty to give reasons, at least in relation to those cases where a person's civil rights and obligations are being determined. But it is in the context of the application of that Act that any wide-reaching review of the position at common law should take place.

[21] It would appear that the duty to give reasons has now become part of a lawful decision-making process. However, this requirement should only be applied on a case to case basis. The principle in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan tanggungan* had been considered and summarised by the Court of Appeal in *Mohamad Hassan bin Zakaria v Universiti Teknologi Malaysia* [2017] 6 MLJ 586; [2017] 10 CLJ 36 per Mary Lim JCA at p 605 (MLJ); p 54 (CLJ):

[46] Without diminishing its importance and contributions to many respects in the law on judicial review and the law of bias, the Federal Court's decision in Majlis Perbandaran Pulau Pinang concerns the local Authority's imposition of conditions to its approval of the respondent's application for planning permission. The facts are not really important for our present purpose, but the Federal Court's view on the principles of the duty to give reasons are. Generally, the principles that can be deduced from the Federal Court's decision on this issue may be summed up as follows:

(a) the duty to give reasons depends on whether there is an express duty to do so;

(b) where there is no express duty, the court should consider e is an implied obligation to state reasons;

(c) if there is no express or implied obligation, is there power to give reason?

(d) at common law, although there is no universal duty to give reasons, the trend is to give reasons;

(e) this trend is consistent with current development towards an increased openness on matters of Government and administration;

(f) the giving of reasons is a matter of fairness;

(g) this trend proceeds on a case to case basis.

[22] As I have stated earlier, s 44(5)(b) does not make it mandatory for the director to state the reason for the refusal of the mining lease. There is no express duty to do so. Can it be said now that there is an implied duty of the director to give reason?

[23] In the case of *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor* it was stated that:

> But, we could not find any statute which contains express provisions that affirmatively prohibit a public officer, as a decision-maker, in the discharge of his public duty, from assigning any reason for his decision. Indeed, it would be most strange, if there is one such statute. We say so because it would defeat the essence of good governance and that it would not promote accountability and owing up to responsibility in decision-making. As such, the silent in a statute requiring that a reason or reasons be given by the decision-maker ought not to be taken to mean there was therefore no duty to give reasons. The silence in the statute, on the duty to give reason for a decision, ought not to be made a cloak or a blanket under which the decision-maker could conveniently find refuge so that the rationale for his decision remains shrouded in mystery, privy only to himself, but not to the public at large, on whose behalf, he is entrusted to discharge that duty. That scenario would indeed be a contradiction in terms.

[24] In this case, the applicant, being a holder of a general prospecting licence, is just one step away from obtaining a mining lease. In fact s 32(2) and (3) expressly state that his right to be granted a mining licence would be subject to certain conditions listed thereunder. On the other hand, s 44(4) and (5) provide that the first respondent shall verify whether the applicant has complied with the requirements of the said Ordinance and is technically and financially qualify to develop and mine the area to which the application relates. Further, the applicant had invested a huge sum of monies in that area. Considering all these facts in a proper perspective, it is now imperative that the first respondent should provide the reasons for its refusal to grant the mining lease to the applicant. The absence of any reasons in the letter dated 16 May and 21 August 2017 would trigger a reasonable inference that the first respondent had not exercised its discretion in accordance with the law.

[25] Based on the fact of the present case, it is my considered opinion that the first respondent had breach the rule of natural justice in making its decision. This is a proper case where the decision should be quashed. Be that as it may, I must also state that the application for the mining lease is not a straight forward matter. This is reflected in s 44(1), (2) and (4) of the said Ordinance whereby the approving Authority is duty bound to consider various issues including the technical aspect of the operation. I also take judicial notice that mining activities in any part of the world may have negative impact on the

environment. While this court has the supervisory jurisdiction over the exercise of the administrative discretion of a decision making body, it has no expertise on technical issues connected with the application such as the present case.

[26] Having considered the application, the affidavit evidence and submission by counsel, I find that there are merit in this application. It is hereby ordered that:

(a) an order of certiorari be issued to quash the decision of the first respondent as contained in its letter dated 21 August 2017 rejecting the applicant's application for mining leases over part of the areas under the applicant's general prospecting licence No 01/2014 at Tutoh, Baram, Miri; and

(b) an order of mandamus be issued to the respondents or any of them to reconsider and re determine the applicant's applications for the grant of mining leases over part of the areas under the applicant's general prospecting licence No 01/2014 at Tutoh, Baram, Miri and more particularly described as Areas B,C and D as shown in the plan annexed to this application and marked as 'A' after the applicant has been afforded a fair and reasonable opportunity to:

  (i) remedy or submit any necessary documents in relation to the said applications if any of those documents is not in order or insufficient; and

  (ii) make representations in relation to any of the comments and recommendations in the report of the third respondent under s 44(1) of the Mineral Ordinance 2004, if any of those comments and recommendations is adverse to the applicant.

(c) cost of RM10,000 to the applicant subject to payment of allocator fee.

Order accordingly.

Reported by Ashok Kumar